



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/070,920	05/04/1998	AKITOSHI YAMADA	37B.P48	4955
5514	7590	02/02/2004	EXAMINER	
FITZPATRICK CELLA HARPER & SCINTO 30 ROCKEFELLER PLAZA NEW YORK, NY 10112			STEWART JR, CHARLES W	
			ART UNIT	PAPER NUMBER
			2853	

DATE MAILED: 02/02/2004

Please find below and/or attached an Office communication concerning this application or proceeding.



UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
WASHINGTON, D.C. 20231
www.uspto.gov

FAX RECEIVED

FEB - 2 2004

TECHNOLOGY CENTER 2800

Appl No.: 09/070,920
Applicant: Yamada et al
Filed: May 4, 1998

Paper No. 18

**DECISION ON PETITION
UNDER 37 CFR 1.144 on
Finality of Restriction
Requirement**

This is a decision on the "Petition under 37 CFR 1.144" filed March 22, 2001.

The applicant petitions the restriction requirement primarily on the basis that the Examiner has failed to address the requirements of MPEP 806.05(e) for a restriction. Although the Examiner has repeated the requirements for restriction including the citation of MPEP 806.05(e), it is affirmed that the Examiner has not actually stated the examples per the citation and has therefore not met the initial burden.

The applicant also petitions on other grounds, for example, including that the apparatus claims are "linking claims" and must be examined with the elected invention. I do not agree that these are in fact linking claims, however, for the reasons already stated above the other considerations are moot in view of the fact that the Examiner has never met the initial burden required by the MPEP 806.05(e).

The petition is GRANTED.

The application is being forwarded to the examiner for appropriate action.


Stephen D. Meier
Supervisory Patent Examiner,
Art Unit 2853